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DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-893]

Fine Denier Polyester Staple Fiber from the Republic of Korea: Amended Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is amending the *Final Results* of a changed circumstances review (CCR) of the antidumping duty (AD) order on fine denier polyester staple fiber (PSF) from the Republic of Korea (Korea) to correct certain ministerial errors.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Thomas Hanna, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0835.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 2019, Commerce published the *Final Results* of a changed circumstances review (CCR) of the AD order on PSF from Korea.<sup>1</sup> In those *Final Results*, Commerce determined, based on its successor-in-interest analysis and evidence that Toray Chemical Korea,

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<sup>1</sup> See *Fine Denier Polyester Staple Fiber (PSF) from the Republic of Korea: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 84 FR 52457 (October 2, 2019) (*CCR Final Results*).

Inc. (TCK) merged into Toray Advanced Materials Korea, Inc. (TAK), that TAK is the successor-in-interest to TCK. On October 1, 2019, TAK alleged that Commerce made certain ministerial errors in the *CCR Final Results*.<sup>2</sup>

### Legal Framework

A ministerial error, as defined in section 751(h) of the Tariff Act of 1930, as amended (the Act), includes “errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.”<sup>3</sup> Commerce’s regulations (19 CFR 351.224(e)) provide that Commerce “will analyze any comments received and, if appropriate, correct any ministerial error by amending...the final results of review....”

### TAK’s Comments

According to TAK, Commerce erred by stating that it would “instruct U.S. Customs and Border Protection to suspend entries of subject merchandise produced or exported by TAK at TCK current cash deposit rate of 0.00 percent” because TCK was excluded from the AD order on PSF from Korea if it both produced and exported PSF and entries of such merchandise were not subject to suspension of liquidation or cash deposit requirements.<sup>4</sup> TAK also alleges that Commerce erred in making its successor-in-interest determination effective upon publication of the final results of the CCR and not effective April 1, 2019, the date TCK merged into TAK.<sup>5</sup>

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<sup>2</sup> See TAK’s Letter, “Fine Denier Polyester Staple Fiber from the Republic of Korea: Request to Correct Error in Final Results Notice of Changed Circumstances Review,” dated October 1, 2019 (*TAK’s Letter*).

<sup>3</sup> See 19 CFR 351.224(f).

<sup>4</sup> See *Fine Denier Polyester Staple Fiber From the People’s Republic of China, India, the Republic of Korea, and Taiwan: Antidumping Duty Orders*, 83 FR 34545 (July 20, 2018).

<sup>5</sup> See *TAK’s Letter*.

## Analysis

We agree with TAK. Thus, Commerce's determination that TAK is the successor-in-interest to TCK means that as of the effective date of Commerce's successor-in-interest determination, subject merchandise produced and exported by TAK is not subject to the antidumping duty order on PSF from Korea. Therefore, entries of such merchandise should not be subject to suspension of liquidation, but should be liquidated without regard to antidumping duties. For those entries, we should not have indicated in the *CCR Final Results* that we would "instruct U.S. Customs and Border Protection to suspend entries of subject merchandise produced *or* exported by TAK at TCK's current cash deposit rate of 0.00 percent" (emphasis added) because: (1) PSF produced *and* exported by TAK is entitled to the exclusion that applies to PSF produced *and* exported by TCK; and (2) in the underlying investigation, Commerce instructed CBP not to suspend liquidation of entries of PSF produced and exported by TCK.

On the other hand, for PSF produced by TCK but exported by another entity to the United States, or merchandise produced by another entity, and exported by TCK to the United States, TAK is the successor-in-interest to TCK, but like TCK, TAK's merchandise would not be excluded from the AD order on PSF from Korea.

In the *CCR Final Results*, we also indicated that our successor-in-interest determination would take effect upon publication of the final results of the CCR.<sup>6</sup> This approach is consistent with the position taken by Commerce in other CCRs, including two CCRs covering the same merger but different AD orders.<sup>7</sup> However, we overlooked the fact that the instant CCR

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<sup>6</sup> See *Final Results*.

<sup>7</sup> See *Certain Polyester Staple Fiber From the Republic of Korea: Notice of Final Results of Antidumping Duty*

involved a company that had merchandise which it had both produced and exported that was excluded from the AD order on PSF from Korea, whereas the other CCRs that used the publication date as the effective date involved companies whose merchandise was subject to an AD order and had a cash deposit rate, no matter if they produced and/or exported their own merchandise to the United States.

In *Hot-Rolled Lead and Bismuth Carbon Steel Products*, an interested party argued that “the Department's determination to apply Glynwed's antidumping duty deposit rate to Niagara prospectively from the publication date of the final results, is contrary to the Department's finding that Niagara is the successor-in-interest to Glynwed as of May 21, 1999, and inconsistent with the retroactive application of Glynwed's countervailing duty deposit rate to Niagara.”<sup>8</sup> In response, Commerce explained that the effective date was applied retroactively in the countervailing duty case, because merchandise produced and exported by the predecessor company to a successor-in-interest was excluded from the order:

The basis for Niagara's apparent misunderstanding is that it fails to recognize that Glenwed, the predecessor company to Niagara, was excluded, *ab initio*, from the countervailing duty order, but has always been subject to the antidumping duty order. As such, Glenwed, and now its successor-in-interest Niagara, was never liable for any estimated cash deposits under the countervailing duty order. Thus, with the Department's determination that Niagara is the successor-in-interest to Glenwed, Niagara (like Glenwed) is not now, and never was subject to the ... order. Therefore, with respect to the countervailing duty order, it is appropriate to apply the changed circumstances-determination retroactively to May 21, 1999, the date Glenwed became Niagara... However, with respect to the antidumping duty order, it is appropriate to change the estimated cash deposit rate for Niagara only

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*Changed Circumstances Review*, 84 FR 45124 (August 28, 2019); *Low Melt Polyester Staple Fiber From the Republic of Korea: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 84 FR 45129 (August 28, 2019).

8 *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews*, 64 FR 66880-66881 (November 30, 1999) (*Hot-Rolled Lead and Bismuth Carbon Steel Products*).

as of the effective date of the Department's final changed-circumstances determination. Because Glenwed was always subject to the antidumping duty order, it was always potentially liable for estimated cash deposits ... However, because cash deposits are only estimates of the amount of antidumping duties that will be due, changes in cash deposit rates are not made retroactive.<sup>9</sup>

The record shows that TCK merged into TAK on April 1, 2019.<sup>10</sup> Because there is no other information on the record calling into question the merger date, and no parties commented on this matter, consistent with previous practice as shown, it is appropriate to apply the effective date retroactively to April 1, 2019.

Accordingly, we determine, in accordance with section 751(h) of the Act and 19 CFR 351.224(f), that we made a ministerial error in the *CCR Final Results* by stating that we would instruct CBP to suspend entries of subject merchandise produced or exported by TAK at a 0.00 percent cash deposit rate. In fact, for merchandise both produced and exported by TAK, we will instruct CBP not to suspend liquidation of entries of subject merchandise because that merchandise is excluded from the AD order on PSF from Korea. For those entries, we will also instruct CBP to liquidate such entries without regard to antidumping duties. For entries of merchandise produced, but not exported, or exported, but not produced, by TAK, the all-others rate determined in the underlying investigation<sup>11</sup> will continue to be applicable.

With respect to the effective date of these results of a CCR, also in accordance with section 751(h) of the Act and 19 CFR 351.224(f), we determine further that we made a ministerial error in the *CCR Final Results* when we indicated that the results would be effective upon publication of the final results notice, rather than the date of the merger. Because some of

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<sup>9</sup> *Id.*

<sup>10</sup> See TAK's Letter, "Changed Circumstances Review Request," dated May 23, 2019 at Exhibit 2.

<sup>11</sup> *PSF from Korea* Final, 83 FR at 24743.

the merchandise exported by TAK will be excluded from the AD order on PSF from Korea, the effective date should be the date of the merger. Accordingly, pursuant to 19 CFR 351.224(e), we are amending the *Final Results* to correct these errors.

Commerce intends to issue liquidation instructions to CBP 15 days after publication of these amended final results of this CCR instructing CBP to not suspend liquidation of, and to liquidate without regarding to antidumping duties, subject merchandise produced and exported by TCK's successor-in-interest, TAK, entered, or withdrawn from warehouse, for consumption on or after April 1, 2019.

#### Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

#### Notification to Interested Parties

We are issuing this determination and publishing these final results and notice in accordance with sections 751(h) and 777(i) of the Act and 19 CFR 351.224(e).

Dated: November 20, 2019.

Christian Marsh,  
Deputy Assistant Secretary  
for Enforcement and Compliance.

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